

SEP 22 2008

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 5945

DATE COMPLAINT FILED: October 3, 2007

DATE OF NOTIFICATION: October 9, 2007

LAST RESPONSE RECEIVED: October 22, 2007

DATE ACTIVATED: November 6, 2007

STATUTE OF LIMITATIONS: April 14, 2012

**COMPLAINANT:**

Anthony Scannapieco, Jr.

**RESPONDENTS:**

Kieran Michael Lalor  
Kieran Michael Lalor 2008 f/k/a Kieran Michael  
Lalor 2008 Congressional Exploratory Committee  
and Christine Chisholm, in her official capacity as  
treasurer

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 431(2)  
2 U.S.C. § 432(e)(1)  
2 U.S.C. § 433(a)  
2 U.S.C. § 434(a)(2)  
11 C.F.R. § 100.72  
11 C.F.R. § 100.131  
11 C.F.R. § 101.1(a)  
11 C.F.R. § 104.3

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

This matter originated with a complaint filed by Anthony Scannapieco, Jr., alleging that

Kieran Michael Lalor and Kieran Michael Lalor 2008 f/k/a Kieran Michael Lalor 2008

Congressional Exploratory Committee (the "Committee") violated the Federal Election

Campaign Act of 1971, as amended, ("the Act") by failing to register with the Commission once

**Lalor became a candidate for office, and by failing to file regular disclosure reports thereafter.**  
**Complaint at 1.**

**As discussed below, it appears that Lalor exceeded the scope of the "testing the waters" exemption when he made several statements that referred to himself as a candidate for office. Accordingly, we recommend that the Commission (1) find reason to believe that Kieran Michael Lalor violated 2 U.S.C. § 432(e)(1) by failing to timely file his Statement of Candidacy after becoming a candidate on April 4, 2007; (2) find reason to believe that Kieran Michael Lalor 2008 f/k/a Kieran Michael Lalor 2008 Congressional Exploratory Committee and Christine Chisholm, in her official capacity as treasurer, violated 2 U.S.C. §§ 433(a) and 434(a)(2) by failing to timely file the Statement of Organization and quarterly disclosure reports; and (3) authorize conciliation with Kieran Michael Lalor, Kieran Michael Lalor 2008 f/k/a Kieran Michael Lalor 2008 Congressional Exploratory Committee, and Christine Chisholm, in her official capacity as treasurer, prior to a finding of probable cause to believe.**

## **II. FACTUAL AND LEGAL ANALYSIS**

### **A. Factual Background**

**Kieran Michael Lalor is a candidate in the 2008 election for the House of Representatives in New York's 19<sup>th</sup> Congressional District. When the complaint was filed in October 2007, Lalor had not filed any documents with the Commission. Lalor subsequently declared his candidacy on November 25, 2007 and filed his Statement of Candidacy on December 7, 2007. His authorized committee, Kieran Michael Lalor 2008, filed its Statement of Organization on that same date and filed its 2007 Year-End Quarterly Report on January 31, 2008.**

**The complaint alleges two violations. First, it contends that Lalor violated the Act because he failed to file a Statement of Candidacy with the Commission. Complaint at 2.**

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1 Second, the complaint alleges that the Committee violated the Act because it failed to file a  
2 Statement of Organization and quarterly disclosure reports with the Commission. The complaint  
3 points to four facts to support its allegations: (1) Lalor informed the media in April 2007 that he  
4 had raised more than \$20,000 in support of his candidacy; (2) Lalor's website includes a  
5 recitation of the Act's contribution limits, indicating that Lalor authorized a political committee  
6 to serve as his principal campaign committee; (3) Lalor paid for an advertisement that appeared  
7 in the New York State Conservative Party's 45<sup>th</sup> Annual Dinner Program on July 19, 2007  
8 (attached to the complaint as Exhibit B)<sup>1</sup>; and (4) a news article on July 21, 2007 stated Lalor  
9 was running for the Republican nomination in the 19<sup>th</sup> District and had raised more than \$60,000.

10 Lalor's response contends that the Committee is a "testing the waters" committee.

11 Response at 1. Lalor points out that at least two areas on every page of the Committee's website  
12 and every piece of the Committee's correspondence contain the phrase "Congressional  
13 Exploratory Committee." In addition, Lalor states that every reporter who is covering New  
14 York's 19<sup>th</sup> Congressional District was informed that Lalor is not a declared candidate. He  
15 further notes that each article cited in the complaint includes at least one clear reference to the  
16 exploratory nature of the Committee.

17 Citing to 11 C.F.R. § 100.72, Lalor argues that he was not required to file a Statement of  
18 Candidacy or any other reports. Response at 2. Lalor explains that no reasonable reader of his  
19 advertisement in the New York State Conservative Party's program could construe it as anything  
20 other than exploring the feasibility of his candidacy. Further, Lalor explains that the recitation of  
21 the Act's contribution limits on his website is necessary because funds used for "testing the  
22 waters" must be permissible under the Act. 11 C.F.R. § 100.131. Finally, Lalor argues that the

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<sup>1</sup> The complaint attaches what appears to be the cover and single page of the program containing Lalor's advertisement. We were unable to locate a full program through publicly available sources.

1 complaint was politically motivated, as Complainant endorsed a competing candidate and filed  
2 the complaint days after Lalor's Committee issued a press release discussing criminal charges  
3 against Complainant. Response at 3.

4 **B. Legal Analysis**

5 Under the Act, an individual becomes a "candidate" when he or she has received or made  
6 in excess of \$5,000 in contributions or expenditures. 2 U.S.C. § 431(2). However, the  
7 Commission's regulations provide that the terms "contribution" and "expenditure" do not  
8 include funds or payments made solely to determine whether an individual should become a  
9 candidate. 11 C.F.R. §§ 100.72(a) and 100.131(a). Permissible "testing the waters" activities  
10 include, but are not limited to, conducting polls, making telephone calls, and traveling. *Id.* So  
11 long as an individual is "testing the waters," he or she is not required to file with the  
12 Commission.

13 However, when an individual raises or spends more than \$5,000 and engages in activities  
14 indicating that he or she has decided to run for a particular office, the "testing the waters"  
15 exemption is no longer available. Examples of activities that indicate that an individual has  
16 decided to become a candidate include, but are not limited to: (1) the individual uses general  
17 public political advertising to publicize his or her intention to campaign for federal office; (2) the  
18 individual raises funds in excess of what could reasonably be expected to be used for exploratory  
19 activities or undertakes activities designed to amass campaign funds that would be spent after he  
20 or she becomes a candidate; (3) the individual makes or authorizes written or oral statements that  
21 refer to him or her as a candidate for a particular office; (4) the individual conducts activities in  
22 close proximity to the election or over a protracted period of time; and (5) the individual has  
23 taken action to qualify for the ballot under state law. 11 C.F.R. §§ 100.72(b) and 100.131(b).

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1           Achieving "candidate" status triggers registration and reporting requirements for the  
2 candidate and his or her principal campaign committee. Within 15 days of becoming a  
3 candidate, the individual must file a Statement of Candidacy with the Commission that  
4 designates the candidate's principal campaign committee. 2 U.S.C. § 432(e)(1); *see also*  
5 11 C.F.R. § 101.1(a). The principal campaign committee must file a Statement of Organization  
6 no later than 10 days after the candidate designates it as such. 2 U.S.C. § 433(a). All reportable  
7 amounts from the beginning of the "testing the waters" period must be filed with the first  
8 financial disclosure report filed by the committee, even if the amounts were received or  
9 expended prior to the reporting period. *See* 11 C.F.R. §§ 104.3(a) and (b).

10           The Commission has previously considered what removes a candidate from the "testing  
11 the waters" exemption. In previous matters, the Commission determined that raising a  
12 significant amount of contributions was not sufficient by itself to warrant a finding of reason to  
13 believe. *See, e.g.,* MUR 5703 (Rainville) (no reason to believe where committee raised  
14 \$100,000); MUR 5661 (Butler) (same); MUR 2710 (Judge Harvey Sloane) (no reason to believe  
15 where committee raised \$200,000). On the other hand, the Commission has considered  
16 declarations of intent to run for office sufficient to warrant findings of reason to believe. *See,*  
17 *e.g.,* MUR 5363 (Sharpton) (candidate published a book including statements such as "It is on  
18 these qualities that I am seeking the Presidency of the United States in 2004"); MUR 5693  
19 (Aronsohn) (candidate sent solicitation letter that included statements such as "But I have the  
20 energy, the experience, and the determination to win this race. And as evidenced by the attached  
21 news article, I am ready to begin fighting for our future...now"; "Every dollar we receive in the  
22 next few weeks can help us prepare for this fight against Scott Garrett"; and "We have come a  
23 long way in just a few short weeks. And with your support, we can go the distance"); and

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1 MUR 5251 (Rogers) (candidate reportedly said, "I want to be your congressman and need your  
2 help to win the seat" at a fundraising event, and sent a fundraising letter that contained the  
3 statement, "I know that I will effectively serve your interests in Congress and that because of the  
4 close working relationship with the President and the leadership of Congress that I will  
5 immediately work for the benefit of Colorado").<sup>2</sup>

6 In the present matter, the complainant asserts that Lalor became a candidate when he  
7 raised a significant amount of campaign funds and made statements that referred to himself as a  
8 candidate for office. The Committee's 2007 Year-End Quarterly Report disclosed \$30,915 in  
9 contributions received, an amount that would not alone trigger candidate status based on  
10 Commission precedent. *See, e.g.,* MUR 5703 (Rainville). However, it does appear that Lalor  
11 made statements referring to himself as a candidate and thus arguably take him outside of the  
12 "testing the waters" exemption.

13 Several particularly strong statements are quoted in press articles, some of which were  
14 not addressed in the complaint but are included on Lalor's campaign website. In April 2007,  
15 when Lalor announced that he had raised \$20,000 he reportedly stated, "The early support for  
16 my *candidacy* is confirmation that voters in the district are excited to embrace a true  
17 conservative." David Paulsen, *Iraq Vet Eyes Hall Challenge*, *POUGHKEEPSIE JOURNAL*, April 4,  
18 2007, available at [http://www.kml2008.com/eyes\\_hall.htm](http://www.kml2008.com/eyes_hall.htm) (emphasis added). Several days  
19 later, *Congressional Quarterly* published a statement attributed to Lalor: "The more people I  
20 meet, the more I'm encouraged that I am going to ultimately make the decision to run...It would

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<sup>2</sup> *See contra* MUR 5661 (Butler). The complaint alleged that Keith Butler distributed "high quality" campaign literature and announced to Republican State Convention delegates that he had raised over \$100,000 "in his campaign for U.S. Senate." The brochure distributed contained photographs of Butler with his family and other political figures, biographical information, and an excerpt from a news article that included statements by another individual that he believed Butler was in the race, no matter who else decided to run. As the brochure contained none of Butler's own statements and was consistent with his stated purpose of gauging interest in a possible run, the Commission found no reason to believe that Keith Butler or his committee violated the Act.

1 take something major – maybe the second coming of Ronald Reagan in the 19<sup>th</sup> District – to take  
2 me off track.” *Iraq Vet Touts ‘True Conservatism’ in New York 19 Take Back Bid*, THE NEW  
3 YORK TIMES/CQPOLITICS.COM, April 10, 2007, *available at*  
4 [http://www.kml.com/true\\_conservatism.htm](http://www.kml.com/true_conservatism.htm). Lalor echoed this statement in an interview that is  
5 referenced in the candidate’s Response: “Unless the second coming of Ronald Reagan pops up in  
6 the 19<sup>th</sup>, I’m here to stay.” Response Exhibit A. Lalor also compared himself to the current  
7 Representative and said, “When an elected official – my only voice in the House – gives up in  
8 one of his first speeches, it’s unconscionable. I can protect the people in this area and the people  
9 in this country better than John Hall.” Greg Bruno, *Rep. Hall’s Seat Sought Early By Potential*  
10 *Republican Challenger Kieran Michael Lalor ‘Exploring’ 2008 Run*, recordonline.com from the  
11 Times Herald-Record (Middleton, NY), *available at*  
12 [http://www.kml2008.com/sought\\_early.htm](http://www.kml2008.com/sought_early.htm). Several months later, when comparing himself to  
13 another potential Republican candidate, Lalor reportedly stated, “My campaign of ideas and  
14 solutions stands in stark contrast to Saul’s candidacy of carefully calculated issue avoidance.”  
15 *Saul Stands for Nothing But the Bottom Line*, NORTHCOUNTYNEWS.COM, September 21, 2007,  
16 *available at* [http://www.kml2008.com/Saul\\_stands.htm](http://www.kml2008.com/Saul_stands.htm).

17 Lalor’s campaign material also contains a statement that appears to go beyond “testing  
18 the waters.” The Committee’s website and the advertisement placed in the July 19, 2007 New  
19 York Conservative Party dinner program contain similar information, including biographical  
20 information, photographs of the candidate, his positions on important issues, and the phrase  
21 “Kieran Michael Lalor 2008 Congressional Exploratory Committee.” Both also contain the  
22 statement, “With your help, we can reclaim our seat in the House of Representatives so it reflects  
23 our values, not those of Hollywood elites and liberal extremists.”

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1           Lalor's statements regarding Ronald Reagan, the excitement of voters to "embrace a true  
2 conservative," and so on suggest that he was no longer "testing the waters" and are similar to  
3 statements on which the Commission has previously based reason to believe findings. In  
4 particular, Lalor's quotation referenced *supra*, "The more people I meet, the more I'm  
5 encouraged that I am going to ultimately make the decision to run...It would take something  
6 major -- maybe the second coming of Ronald Reagan in the 19<sup>th</sup> District -- to take me off track,"  
7 suggests that barring an event that will not occur (the second coming of Reagan), Lalor has made  
8 the decision to run. The candidate used this language on several occasions, including an e-mail  
9 to the press about the exploratory nature of his campaign. See Response Exhibit A.

10           Lalor's statement "With your help, we can reclaim our seat in the House of  
11 Representatives so it reflects our values" is similar to Rogers's statement "I know that I will  
12 effectively serve your interests in Congress," as both individuals claim that they will represent  
13 their supporters' values and interests when elected, in contrast to potential candidates attempting  
14 to gauge public interest in a possible run. See MUR 5251. Lalor also referred to his "candidacy"  
15 and "campaign of ideas and solutions." This language indicates that Lalor went beyond  
16 determining the feasibility of his candidacy to formulating a campaign for the office.

17           Lalor's website and advertisements support the same conclusion. In soliciting the  
18 public's help to "reclaim our seat in the House of Representatives," Lalor indicated that he has  
19 decided to seek the office. Like Aronsohn's statement "With your support, we can go the  
20 distance," Lalor's statement "I'm here to stay," suggests that the candidate has made the ultimate  
21 decision to run and is in the race until the election. See MUR 5693. Taken together, these  
22 statements show that Lalor was no longer "testing the waters."

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Lalor first made statements of his candidacy for office on April 4, 2007, when he also announced that he had raised \$20,000, which surpasses the \$5,000 needed to become a candidate under the Act. Accordingly, when Lalor became a "candidate," he was required to file a Statement of Candidacy within 15 days of that date (April 19, 2007) and his Committee was required to file a Statement of Organization within 10 days after Lalor designated a principal campaign committee (April 29, 2007). The Committee was also required to file July and October 2007 quarterly disclosure reports.<sup>3</sup> The July 2007 report would have disclosed \$15,982.00 in receipts and \$883.34 in disbursements; the October 2007 report would have disclosed no receipts and \$1,041.86 in disbursements. Accordingly, we recommend that the Commission find reason to believe that Kieran Michael Lalor violated 2 U.S.C. § 432(e)(1) for not timely filing his Statement of Candidacy after becoming a candidate on April 4, 2007, and that Kieran Michael Lalor 2008 f/k/a Kieran Michael Lalor 2008 Congressional Exploratory Committee and Christine Chisholm, in her official capacity as treasurer, violated 2 U.S.C. §§ 433(a) and 434(a)(2) by failing to timely file a Statement of Organization and quarterly disclosure reports.

### **III. CONCILIATION**

We recommend pre-probable cause conciliation in this matter because further investigation is not necessary to establish violations of the Act.

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<sup>3</sup> The Committee's first disclosure report filed was the 2007 Year-End Report, which disclosed \$30,915.00 in receipts and \$4,462.96 in disbursements during the period of March 1, 2007 through December 31, 2007.

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IV. **RECOMMENDATIONS**

1. Find reason to believe that Kieran Michael Lalor violated 2 U.S.C. § 432(e)(1) by failing to timely file his Statement of Candidacy after becoming a candidate on April 4, 2007;
2. Find reason to believe that Kieran Michael Lalor 2008 f/k/a Kieran Michael Lalor 2008 Congressional Exploratory Committee and Christine Chisholm, in her official capacity as treasurer, violated 2 U.S.C. §§ 433(a) and 434(a)(2) by failing to timely file a Statement of Organization and quarterly disclosure reports;
3. Authorize conciliation with Kieran Michael Lalor, Kieran Michael Lalor 2008 f/k/a Kieran Michael Lalor 2008 Congressional Exploratory Committee, and Christine Chisholm, in her official capacity as treasurer, prior to a finding of probable cause to believe;
4. Approve the attached conciliation agreement;
5. Approve the attached Factual and Legal Analysis; and
6. Approve the appropriate letters.

Thomasenia P. Duncan  
General Counsel

Ann Marie Terzaken  
Associate General Counsel for Enforcement

September 23, 2008  
Date

BY: Kathleen M. Guith NA  
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